Eagle Delta Coal Corporation, Inc. *and* District 17, United Mine Workers of America *and* Local 7555, United Mine Workers of America. Cases 9–CA–30096–1, –2 and 9–CA–30295

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the District Union in Cases 9–CA–30096–1, –2 on October 26, 1992, the General Counsel issued a complaint against Eagle Delta Coal Corporation, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On the charge filed in Cases 9–CA–30096–1, –2 and a charge filed by the Local Union in Case 9–CA–30295 on January 6, 1993, the General Counsel issued a consolidated complaint against Eagle Delta Coal Corporation, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. By letters dated April 15 and 16, 1993, the Respondent withdrew its answers in Cases 9–CA–30096–1, –2 and 9–CA–30295 and indicated that the Respondent has filed for protection under Chapter 11 of the Federal Bankruptcy Code.

It is well established that the institution of bankruptcy proceedings does not deprive the National Labor Relations Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id. and cases cited therein.

On May 19, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On May 24, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint and the consolidated complaint affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the Respondent's letters of April 15 and 16, 1993, disclose that the Respondent was aware that if the answers were withdrawn, a Motion for Summary Judgment would be filed.

Inasmuch as the answers have been withdrawn, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the mining of coal in the vicinity of Williamson, West Virginia. During the 12-month period ending October 31, 1992, the Respondent, in conducting its operations, performed services valued in excess of $50,000 for Island Creek Coal Company, a West Virginia enterprise which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the District Union and the Local Union are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The employees of the Respondent described in article I(A) of the National Bituminous Coal Wage Agreement of 1988 (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since October 17, 1986, the District Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements between the Respondent and the International Union, United Mine Workers of America, on behalf of its locals and districts, including the District Union and Local Union, the most recent of which was effective by its terms through February 1, 1993.

At all times since October 17, 1986, based on Section 9(a) of the Act, the District Union has been the exclusive collective-bargaining representative of the unit. At all material times the Local Union has been designated to service the unit.

Since about April 26, 1992, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above by failing to remit dues and strike fund assessments checked off pursuant to article XV of the agreement. Since about July 6, 1992, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above by failing to maintain in effect employees' health insurance pursuant to article XX of the agreement. The Respondent engaged in this conduct without the District Union's consent. These terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

Since about September 17, 1992, the District Union, by letter, requested the Respondent to furnish the Dis-

trict Union with the information set out in an attachment to the unfair labor practice complaint which information is necessary and relevant to the District Union's performance of its duties as the exclusive collective-bargaining representative of the unit.[1]

Since about September 17, 1992, the Respondent has failed and refused to furnish the District Union with this requested information.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the Act and Sections 8(d) and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to comply with the provisions of article XV of the collective-bargaining agreement regarding remission of dues and strike fund assessments that have been checked off and to make the Union whole for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent to abide by the provisions of article XX of the collective-bargaining agreement with regard to maintenance of employees' health insurance and to make the unit employees whole by reimbursing them for any expenses they may have incurred as a result of the Respondent's failure to do so, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to provide the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Eagle Delta Coal Corporation, Inc., Williamson, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement between the Respondent and the International Union, United Mine Workers of America, effective by its terms through February 1, 1993, for the employees in the unit described below, by failing to remit dues and strike fund assessments checked off pursuant to article XV of the agreement; or by failing to maintain in effect employees' health insurance pursuant to article XX of the agreement:

> The employees of Respondent described in Article I(A) of the National Bituminous Coal Wage Agreement of 1988.

(b) Failing and refusing to furnish the District Union with requested information which is necessary for and relevant to the District Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by article XV (dues and strike fund assessments) and article XX (health insurance) of the collective-bargaining agreement effective by its terms through February 1, 1993, and thereafter until a new agreement or valid impasse in bargaining is reached.

(b) Make the Union and the unit employees whole for its failure to abide by article XV (dues and strike fund assessments) and article XX (health insurance) of the collective-bargaining agreement effective by its terms through February 1, 1993, since April 26 and July 6, 1992, respectively, as set forth in the remedy section of this decision.

(c) Furnish the Union the following requested information by it in its letter of September 17, 1992, except as noted here.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Williamson, West Virginia, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by

[1] Included within the request for information was a request for employee social security numbers. The Board has previously held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we will not order the Respondent to produce social security numbers. *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 18, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to continue in effect all the terms and conditions of our collective-bargaining agreement with the International Union, United Mine Workers of America, effective by its terms through February 1, 1993, for the employees in the unit described below, by failing to remit dues and strike fund assessments checked off pursuant to article XV of the agreement or by failing to maintain in effect employees' health insurance pursuant to article XX of the agreement. The unit is:

> Our employees described in Article I(A) of the National Bituminous Coal Wage Agreement of 1988.

WE WILL NOT fail or refuse to furnish the District Union with requested information which is necessary for and relevant to the District Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by article XV (dues and strike fund assessments) and article XX (health insurance) of the collective-bargaining agreement effective by its terms through February 1, 1993, and thereafter until a new agreement or valid impasse in bargaining is reached and make the Union and the unit employees whole for our failure to abide by article XV (dues and strike fund assessments) and article XX (health insurance) since April 26 and July 6, 1992, respectively.

WE WILL furnish the Union the information it requested on September 17, 1992.

EAGLE DELTA COAL CORPORATION, INC.